tion, yet the reader is somewhat surprised to see Hume's *History of England* quoted as an authority for statements of fact (p. 91).

Typographical errors are rather too numerous, even for a first edition. Reference is made (p. 232) to the *Courts of Pied Pondre* and to the *Contume de Normandie* (p. 340). The Act of Union with Ireland is dated 1901. Pronouns are frequently unskilfully used and there is some repetition. The substance of p.106 is repeated, verbatim in parts, on p. 126.

T. F. MORAN.

A Treatise on American Citizenship. By JOHN S. WISE. (Northport, Long Island: Edward Thompson Company. 1906. Pp. 340.)

In his introduction the author says "the subject is not only one concerning which the legal profession should have a convenient textbook, but is an indispensable part of the education of every man who makes pretension to a fair education and knowledge of the history of his country. * * * The whole object of the author has been attained if he has succeeded in putting the origin, nature and obligation of the citizen in form sufficiently attractive to enlist a more widespread understanding among educated Americans of their rights and obligations as American citizens. The present ignorance of our people and the confusion in their apprehension of the subject would be something incredible in older countries."

The aim of the author has been, for most part, attained. The book is well arranged, well indexed, and is so written that the non-professional reader will be able to get through it with far less weariness of the flesh than he would experience in the perusal of most law books. It does not attempt any exhaustive discussion. It essays merely to unfold in logical and readable form the settled law governing the rights, privileges, and immunities of citizens of the United States and of the several States. There is little occasion to question the accuracy of the author's statement of most of the legal principles he lays down. Naturally, there are some clerical or typographical errors. Such as, for example, the statement on p. 163 that the "opinion of Chief Justice Taney in the *habeas corpus* case of Milligan is one of the finest pieces of judicial eloquence in American jurisprudence." The footnote gives the reference "1866, 4 Wall. 2." The case of *ex parte*

Milligan was a *habeas corpus* case and it was decided by the Supreme Court of the United States at the December term in the year 1866, but the opinion in that case was delivered by Mr. Justice David Davis and not by Chief Justice Taney, who, at the time it was handed down, had been more than two years in his grave. The case meant by the author was unquestionably *ex parte* Merryman reported in Taney 246 and in 17 Federal Cases, 144. Chief Justice Taney's opinion delivered in the case of John Merryman of Hayfields, who in 1861 made application for a writ of *habeas corpus* in order to secure his discharge from military arrest, deserves the encomium which Mr. Wise passes upon it.

There are a few inaccurate or insufficient statements. Thus on p. 195 it is said "the Fourteenth Amendment is broader in language than the Thirteenth, yet no broader than the Thirteenth in conferring any power upon the Federal Government to legislate upon its own initiative." The fact, of course, is that the Thirteenth Amendment relates to but one subject and the Fourteenth to many subjects. Yet, for the most part, the Fourteenth Amendment is directed to the sole end of protecting the citizens of the United States against unjust action upon the part of the States as such, and the power of Congress to enforce the Amendment is, consequently, limited to preventing or punishing such action on the part of any State, or of those who act for the State. The Thirteenth Amendment prohibits the existence of slavery or involuntary servitude anywhere within the United States, and Congress has the constitutional right to punish anyone who anywhere within the United States holds another in slavery or involuntary servitude.[1] This important distinction between the Thirteenth Amendment on the one hand and the Fourteenth and Fifteenth on the other, is not in this portion of his book, alluded to by the author. On p. 205 it is stated that it is impossible to reconcile the decision in *ex parte* Virginia, 100 U. S., 339, with the case of Virginia *vs.* Rives, 100 U. S., 313. There seems to be no such difficulty. In Virginia *vs.* Rives it is expressly declared that a State may exert her authority through different agencies and the prohibitions of the Fourteenth Amendment extend to her action denying equal protection of the laws whether it be action by one of these agencies or the other. Congress, by virtue of the fifth section of the Fourteenth Amendment, may enforce the prohibitions whenever they are disregarded by either the legislative, the executive, or the judicial department of the

[1] Clyatt *vs.* U. S. 197 U. S., 207.

State. The mode of enforcement is left to its discretion, but the Fourteenth Amendment is broader than section 641 of the Revised Statutes, as the latter does not apply to all cases in which the equal protection of the laws may be denied to a defendant. Section 641 of the Revised Statutes is the section which provides for removal from the State to Federal courts of any civil suit or prosecution commenced in any State court for any cause whatever, against any person who is denied or cannot enforce in the judicial tribunals of the State, where such suit or prosecution is pending, any rights secured him by law providing for the equal civil rights of citizens of the United States. The court, therefore, refused to order the case removed from the State to the Federal court. In *ex parte* Virginia, the court held that the provision of the act of March 1, 1875, imposing punishment on any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen on account of race, color or previous condition of servitude, was a valid exercise of the constitutional power of Congress and that a Virginia judge indicted in the Federal courts for such violation of the statute must stand his trial. On p. 188 and 189, the author discusses the right of the citizen to free speech. He says: "In time of peace under Federal statutes authorizing the deportation of anarchists, persons have from time to time been indicted, arrested, punished or deported for seditious, anarchistic and nihilistic utterances and publications." Reference is made to the case of United States *vs.* Williams, 194 U. S., 279. The author does not say that the Supreme Court distinctly based its decision in that case on the ground that John Turner, the English anarchist whom the immigration authorities were seeking to deport, was *not* a *citizen* but an *alien*; nor does he give any reference to any cases arising under the Federal statutes authorizing the deportation of anarchists in which persons have, from time to time, been indicted and arrested and punished for sedition, anarchistic and nihilistic utterances and publications.

As a rule, however, in his statement of the result of the adjudged cases the author is both clear and correct. It is not so certain that he is always so in his historical illustrations or that his own comments on political questions are always well balanced. In discussing the opposition to the adoption of the Federal Constitution he says, on p. 26, "it was argued by those opposed to the Constitution in the North that it placed the Northern States, especially the small ones, at the mercy

of the Southern States in the Union. It was this argument, no doubt, that made Rhode Island reluctant to become a member of the Union. On the other hand, the Southern States realized that the population of the North was growing much more rapidly than that of the South. It was argued by those opposed to the Union in the South that such a result was inevitable; that in a short time the slave-holding States would be dominated by the free States of the North and West. * * * It was doubtless by arguments like this that North Carolina was restrained so long from becoming a member of the Union." The proceedings and debates of the North Carolina convention of 1788, are quite fully reported in the fourth volume of Elliott's Debates. The argument which the author thinks controlled the action of that convention in refusing ratification does not appear to have been made in the convention at all. One speaker alone said something which might possibly show that such an idea had crossed his mind. So far from the opposition in North Carolina to the ratification of the Constitution having its root in the zeal of the people for the protection of the slave interests, the fact was that Mr. Iredell, the federalist leader, showed that he felt that in his State there was only one subject in connection with the question of slavery upon which the friends of the Constitution were on the defensive, and that was with reference to the provision of the Constitution which permitted for twenty years the importation of slaves. He evidently assumed, and the speeches in reply to him seem to have justified the assumption, that public opinion in North Carolina was then opposed to the further importation of negroes and would have favored the getting rid of slavery altogether. North Carolina had then, as it has now, few towns of importance. It was a farming community and for the most part a community of small farms. Like all other similar sections of the country it disliked the new Constitution. It feared that the taxes of the new government would be levied in money and the people had no money with which to pay taxes. There was a general belief that the provisions of the Constitution intended to prevent the further issue of paper money would increase the burdens of the debtor class. As compared with North Carolina, Rhode Island was then a commercial State; yet its policy was controlled by the non-commercial classes and the considerations which determined its action were substantially the same as those which led North Carolina to decide the question in the same way. The dominant party in Rhode Island was committed to the cheap money theory.

On p. 152, speaking with reference to the Supreme Court, Mr. Wise says: "even concerning such of its decisions as have been refuted by the logic of events, the wisdom and justice of its action upon the law and the facts then before it, are now universally admitted, however bitterly they might have been aspersed at the time those decisions were rendered." It seems probable that the author had in mind, among the cases which had given rise to criticism, that of Dred Scott. Opinions still differ as to whether what the court in that case assumed to decide would have been decided rightly had the court been called on to decide it at all. The unwisdom in that case of the court's traveling outside the record to express its opinion upon a question of then current political discussion has, by the lapse of time, become not less but more apparent. On pp. 189 and 190, the author says: "On the other hand, those who in that day (1787) were so ardent for the absolute liberty of the press could not have foreseen the immense increase in public and private printed matter which was to occur, the almost unlimited power for good or evil which the press was to possess, the irreparable nature of the injuries which it is often able to inflict, or the irresponsible hands into which so large a portion of the press of our day was in time to pass." Does the author really believe that the press today is in less responsible hands than it was in 1787? The worst of the yellow journals are pecuniarily able to answer for any conceivable judgment that could be reasonably given against them. Not so much could have been said for most of the editors who libeled the first President of the United States.

It is doubtful whether all of his readers will agree with the statement with which he closes his treatise, that "we sorely need a laboring class not composed of individuals who aspire to higher education, political prominence, social importance, and even the Presidency of the United States." There are other things we need more.

JOHN C. ROSE.

War Government, Federal and State, in Massachusetts, New York, Pennsylvania and Indiana, 1861–1865. By WILLIAM B. WEEDEN. (Boston and New York: Houghton, Mifflin and Company. 1906. Pp. xxv, 379.)

Said a leading American journal, shortly after the close of the Civil War: "We all expect sometime to write out our impressions of the